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Asis bin Lako v Public Prosecutor

B COURT OF APPEAL (KUCHING) — CRIMINAL APPEAL NO Q-05–367–12 OF 2014
TENGKU MAIMUN, AHMADI ASNAWI AND IDRUS HARUN JJCA
5 JUNE 2017

C *Criminal Law — Defence — Right of private defence — Murder — Grave and sudden provocation — Sudden fight — Whether appellant could rely on right of private defence — Whether there was sudden fight — Whether there was grave and sudden provocation*

D The appellant was charged with the murder of Sepey ak Tukau ('the deceased') under s 302 of the Penal Code ('the Code'). The appellant was convicted of the offence and was sentenced to suffer the death penalty. The deceased and Nurhasnizam bin Husaini ('PW9') were security guards who were both on
E duty at a security post when a motorcycle with the appellant and another man appeared outside the gate. The appellant requested PW9 to open the gate to let them pass through. PW9 initially refused as it was late, however upon seeing the appellant holding a knife, he obliged. As PW9 was opening the gate, the deceased came and scolded and cursed at the appellant. The appellant became
F angry and took a knife and pointed it at the deceased's neck. The deceased apologised but the appellant ignored the deceased's apology. The deceased was then pushed into the post by the appellant. PW9 heard a scuffle inside the post and he heard the deceased groan in pain. He however could not enter or see into the post as the other man stood at the post's door blocking the view. PW9
G panicked and fled towards another security post where he related the incident to one Ardianto, another guard. PW9 only went back to his post with Ardianto at 5.30am the next day. He saw the deceased lying on his back with an injury at his abdomen and presumed him to be dead. The appellant was caught several days later by another security guard ('PW8'). The appellant's version was that,
H the deceased attacked him with a 'parang' and in response, he stabbed the deceased in the stomach. Three grounds of appeal were submitted by the appellant which were: (a) the appellant's right of private defence; (b) grave and sudden provocation; and (c) sudden fight.

I **Held**, dismissing the appeal against conviction and affirming the sentence handed down by the High Court:

(1) The court agreed with the findings of the learned trial judge that the appellant's testimony was neither credible nor plausible as: (a) they had failed to state that the deceased had inflicted three injuries on him before

he stabbed the deceased in his cautioned statement; (b) there was no evidence to support the appellant's testimony that he suffered the injuries due to the deceased attack; (c) there was no evidence that the injuries suffered were serious and life threatening; (d) there was evidence that the appellant suffered minor injuries as he was being apprehended by PW8; and (e) there was no evidence of a 'parang' being used, concealed or disposed of by anybody. Upon examination of the facts and evidence of the case, the court was convinced that the learned trial judge was right in his finding. On the same ground, the court found that there was no basis to support the appellant's claim to a defence of sudden fight (see paras 31–32 & 34–35).

(2) The court was in full agreement with the findings of the learned judge in rejecting the defence of grave and sudden provocation. The appellant had failed to prove: (a) whether the words used by the deceased to scold him were sufficient to deprive him of the power of self-control and he had lost control of himself; (b) whether there was a cooling period; (c) whether the means used by the appellant were reasonable in view of the provocation made; (d) whether there was necessity to attack or inflict injuries on the deceased; and (e) whether that the appellant had caused the death by mistake or accident. Based on the facts and evidence, the court was in full agreement with the findings of the learned judge and had no basis to find otherwise (see paras 38–39).

[Bahasa Malaysia summary

Perayu dituduh dengan membunuh Sepey ak Tukau ('si mati') di bawah s 302 Kanun Keseksaan ('Kanun'). Perayu disabitkan dengan kesalahan dan dijatuhkan hukuman mati. Si mati dan Nurhasnizam bin Husaini ('PW9') adalah pengawal keselamatan yang kedua-duanya bertugas di pos kawalan apabila perayu dan lelaki lain yang bermotosikal muncul di luar pagar. Perayu meminta PW9 untuk membuka pintu pagar untuk memberikan mereka masuk. PW9 pada mulanya enggan kerana ia adalah lewat malam, walau bagaimanapun apabila melihat perayu memegang pisau, dia terpaksa mengikut. Semasa PW9 membuka pintu pagar, si mati datang dan memarahi dan menyumpah perayu. Perayu menjadi marah dan mengambil pisau dan mangacukannya ke leher si mati. Si mati meminta maaf tetapi perayu tidak menghiraukan permintaan maaf tersebut. Si mati kemudiannya ditolak masuk ke dalam pos kawalan oleh perayu. PW9 mendengar pergelutan di dalam pos kawalan dan mendengar si mati mengerang kesakitan. Dia walau bagaimanapun tidak dapat memasuki atau melihat ke dalam pos kawalan tersebut kerana lelaki satu lagi berdiri di pintu pos kawalan menghalangi pandangan. PW9 panik dan berlari ke arah pos kawalan satu lagi di mana dia memberitahu kejadian tersebut kepada seorang yang bernama Ardianto, pengawal satu lagi. PW9 hanya pergi balik ke pos kawalannya dengan Ardianto pada 5.30 pagi keesokan harinya. Dia melihat si mati terbaring di atas

belakangnya dengan kecederaan di perutnya dan dianggap mati. Perayu ditangkap beberapa hari kemudian oleh pengawal keselamatan yang lain ('PW8'). Versi perayu adalah bahawa, si mati menyerang dia dengan 'parang' dan dalam membalas, dia menikan si mati di perutnya. Tiga alasan rayuan dihujahkan oleh perayu yang mana adalah: (a) hak pembelaan peribadi perayu; (b) bangkitan marah besar dan mengejut; dan (c) pergaduhan tiba-tiba.

Diputuskan, menolak rayuan terhadap sabitan dan mengesahkan hukuman yang dijatuhkan oleh Mahkamah Tinggi:

(1) Mahkamah bersetuju dengan dapatan hakim perbicaraan yang bijaksana bahawa keterangan perayu tidak boleh dipercayai ataupun munasabah kerana: (a) mereka gagal untuk menyatakan bahawa si mati telah mencederakannya dengan tiga kecederaan sebelum dia menikam si mati di dalam pernyataan beramarannya; (b) tidak terdapat keterangan untuk menyokong keterangan perayu bahawa dia mengalami kecederaan akibat serangan si mati; (c) tidak terdapat keterangan bahawa kecederaan yang dialami adalah serius dan mengancam nyawa; (d) terdapat keterangan bahawa perayu mengalami kecederaan ringan kerana dia ditangkap oleh PW8; dan (e) tidak terdapat keterangan mengenai 'parang' yang digunakan, disembunyikan atau dibuang oleh sesiapa. Atas pemeriksaan fakta dan keterangan kes, mahkamah yakin bahawa hakim perbicaraan yang bijaksana betul dalam dapatannya. Atas alasan yang sama, mahkamah mendapati bahawa tidak ada asas untuk menyokong dakwaan perayu terhadap pembelaan pergaduhan tiba-tiba (lihat perenggan 31–32 & 34–35).

(2) Mahkamah bersetuju sepenuhnya dengan dapatan hakim yang bijaksana dalam menolak pembelaan bangkitan marah besar dan mengejut perayu telah gagal untuk membuktikan: (a) sama ada perkataan-perkataan yang digunakan oleh si mati untuk memarahinya adalah mencukupi untuk menafikannya kuasa kawalan diri dan telah hilangan kawalan dirinya; (b) sama ada terdapat tempoh bertenang; (c) sama ada tindakan yang digunakan oleh perayu adalah munasabah mengambil kira provokasi yang dibuat; (d) sama ada terdapat keperluan untuk menyerang atau mencederakan si mati; dan (e) sama ada perayu telah menyebabkan kematian akibat kesilapan atau kemalangan. Berdasarkan fakta dan kes, mahkamah adalah bersetuju penuh dengan dapatan hakim yang bijaksana dan tiada asas untuk mendapati sebaliknya (lihat perenggan 38–39).]

Notes

For cases on defence in general, see 4 *Mallal's Digest* (5th Ed, 2015) paras 1090–1106.

Cases referred to

Bala Anak Matik v PP [2006] 3 MLJ 516; [2006] 2 CLJ 229, CA (refd)
Dato Mokhtar bin Hashim & Anor v PP [1983] 2 MLJ 232; [1983] 2 CLJ 10, FC (refd)
Lorensus Tukan v PP [1988] 1 MLJ 251, SC (refd)
Ng Eng Kooi & Anor v PP [1970] 1 MLJ 267, FC (refd)
PP v Yuvaraj [1969] 2 MLJ 89, PC (refd)

Legislation referred to

Penal Code ss 96, 300

Appeal from: Criminal Trial No BTU-45–302–2/3 of 2013 (High Court, Bintulu)

Ranbir Singh Sangha (Ranbir S Sangha & Co) for the appellant.
Norinna Bahadun (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Ahmadi Asnawi JCA:

[1] The appellant was profferred with the following charge before the High Court at Bintulu:

> That you jointly with one who is still at large, on the 18 day of October 2012 between 1.40 am and 5.30 am, at Security Post, Ladang Tatau Estate, Woodman Plantation Sdn Bhd, Tatau in the District of Tatau, in the state of Sarawak, in furtherance of common intention of you all, did committed murder of one Sepey ak Tukau (M) IC No: 380712–13–5373 and that you have thereby committed an offence punishable under Section 302 read with Section 34 of the Penal Code.

[2] At a conclusion of the trial, the appellant was found guilty and convicted of the offence and sentenced to suffer the death penalty.

[3] Dissatisfied with both conviction and sentence, the appellant lodged an appeal to this court. After examining the entire appeal record and considering the written and oral submissions of the parties, we found the appeal was bereft of merit and dismissed the same. We affirmed the conviction and sentence handed down by the High Court. We now give our grounds.

THE CASE FOR THE PROSECUTION

[4] PW9 ('Nurhasnizam bin Husaini') was an eye witness to the incident that led to the death of the deceased. He and the deceased were co-workers. They were working as security guards at Woodman Plantation Estate at the time of the incident.

A **[5]** On 18 October 2012 at about 1.40am PW9 and the deceased were on duty at a security post known as Post Serupai. They were inside the security post when a motorcycle with two Indonesian men appeared outside the gate. The gate was closed and locked.

B **[6]** One of the men walked to the post and knocked on the post's door. PW9 recognised the man as he had seen him before for about 6–7 times. The man was working at the estate nearby and had been using the road passing by the security post. He is the appellant in this case.

C **[7]** The appellant requested PW9 to open the gate to let them pass through. PW9 refused to open the gate as it was late and the appellant insisted on him. When PW9 saw the appellant knocked on the post's door using a knife, he felt scared and gave the key to the appellant through a window. PW9 then followed
D the appellant towards the gate. While PW9 was opening the gate, the deceased came and said 'kamu tahu jam berapa sekarang' to which the appellant answered 'tidak tahu'. The deceased then scolded and cursed at them. PW9 could only remember the deceased used the word 'lanchau'.

E **[8]** The appellant became angry and took out a knife and pointed it at the deceased's neck. The deceased apologised but was ignored by the appellant. The appellant pushed the deceased inside the post. The other man alighted from the motorcycle and stood at the post's door, preventing PW9 from entering the post and blocking his view.
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[9] PW9 heard a scuffle inside the post and heard the deceased groaned in pain. PW9 panicked and fled towards another security post. He related the incident to a guard named Ardianto. He also managed to contact his father
G Hussaini, who was the chief security officer at the estate. His father instructed them to only go back to his post after daybreak.

[10] PW9 and Ardianto went back to his post at about 5.30am. He saw the deceased lying on his back with an injury at his abdomen and presumed him to
H have been dead. PW9's police report was marked as exh P23.

[11] At about 6am the deceased's daughter ('PW4', Timas ak Sepey), unbeknown to her of what had transpired the night before, came to visit her father together with her husband, only to find him dead on the floor with
I intestines protruding from his stomach wounds.

[12] PW2 ('L/Kopl Norasmah bt Abidin') a policeman at Tatau Police Station, received a call regarding the incident at about 7am. Her first information report ('FIR') was marked as exh P9.

[13] The appellant was caught by members of the public on 23 October 2012. PW8 ('Ricky Tonny ak Sereden') was on duty as a security guard at Saujaya Mahir estate when he was informed by an estate worker that a suspect in a murder case was seen near the canteen. PW8 went to look for the suspect.

[14] PW8 then saw the appellant who ran away upon being approached by PW8. PW8 gave a chase and a struggle ensued during which the appellant took out a knife. PW8 managed to grab the knife, threw it away and apprehended the appellant. PW7 (Lawrence Merka ak Jomba), the chief security officer at Saujana Mahir, then brought the appellant to Tatau Police Station. The arrest report made by PW6 (Koperal Ringga ak Nyegang) was exh P20. The knife seized from the appellant was marked as exh P13C.

[15] PW9 had identified the appellant during the identification parade ('IP') conducted by the investigating officer ('PW10', Chief Insp Zulkifli bin Ishak) on 1 November 2012 at IPD Tatau. The first IP was conducted at about 11am, the second at about 11.15am and the third at about 11.25am. The IP reports were prepared by PW10 and marked respectively as exhs P28, P29 and P30.

[16] The post-mortem report prepared by PW3 was marked as exh P11. The cause of death was 'intra-abdominal injuries due to stab wounds by a sharp weapon, most probably a single-edge knife'. PW3 (Dr Norliza bt Ibrahim) testified that the stab wounds were fatal and sufficient in the ordinary course of nature to cause death.

[17] The defence had tendered the appellant's cautioned statement during the cross-examination of PW10 which was marked as exh D1. In exh D1, the appellant admitted to have stabbed the deceased after the deceased had insulted him and his friend, Hakim, and then attacked him using a 'parang'.

FINDINGS OF THE LEARNED TRIAL JUDGE AT THE END OF THE PROSECUTION'S CASE

[18] Based on the evidence adduced, the learned trial judge had found as follows:

> 25. On the facts and circumstances in this case, the accused and Hakim had acted together at the material times. Although there was no evidence that it was pre-arranged, there was a meeting of minds between the accused and Hakim at that point in time. The accused had pointed the knife at the deceased and pushed the deceased inside the post and Hakim had alighted from the motorcycle and stood at the door to prevent PW9 from going inside the post to help the deceased. PW9 heard the deceased cried out in pain and was later found with stab wounds in his stomach.

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26. The evidence adduced by the prosecution irresistibly pointed to the one and only conclusion that the accused had stabbed the deceased in the stomach with the knife which caused the death of the deceased. From the actions of the accused and Hakim and the wounds inflicted, there was a common intention between the accused and Hakim to cause the death of the deceased: see *Krishna Rao Gurumurthi v PP and Another Appeal* [2009] 2 CLJ 603.

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27. The accused had tendered his cautioned statement as exh D1 through PW10 during his cross-examination. The accused in his statement confirmed that he had stabbed the deceased with the knife. The accused however contended that it was in self-defence.

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[19] The appellant in exh D1 had stated that the deceased had insulted him using the words 'Anjing pukul berapa ini limpas' and 'eh cibai ini anjing' and the deceased had attacked him using a 'parang'. Learned counsel submitted that the appellant was entitled to a right of self-defence or at the very least a defence of grave and sudden provocation.

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[20] On the issue of grave and sudden provocation and private defence, the learned trial judge had concluded as follows:

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37. The alleged insults used were a mixture of Bahasa Malaysia and Chinese dialect. The accused had not testified and had not given any explanation whether he understood these words used to scold him, whether these words amounted to grave and sudden provocation, whether they were sufficient to deprive him of the power of self-control, whether he had lost control of himself, whether there was any

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cooling period, whether the means he used to retaliate were reasonable in view of the provocation made, whether there was any necessity to attack or inflict the injuries on the deceased or whether he caused the death by mistake or accident. Therefore there was no basis for the accused to submit that at the end of the prosecution's case that the charge under s 302 against him should be reduced to a charge under s 304(a) of the Penal Code: see *Public Prosecutor v Lim Eng Kiat* [1995] 1 MLJ 625 *Rikky Purba v PP* [2014] 3 CLJ 607; *PP v Gunus Sagena* [2014] 4 CLJ 1016.

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38. Although the accused had testified that the deceased had attacked him with the parang, he did not testify or give any explanation whether there was any warning of the attack, whether it was a sudden fight, whether it was premeditated, whether the

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wounds or injuries sustained by him were grievous injuries or might cause his death, whether the apprehension of death or danger was reasonable or otherwise, whether he had acted in self-defence and whether he acted in excess of his right to self-defence: see *Musa bin Yusof v Public Prosecutor* [1953] 1 MLJ 70; *Ya bin Daud v Public Prosecutor* [1997] 4 MLJ 322; [1996] 1 AMR 1129. At this juncture there

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was no basis for him to raise the right of private defence at the end of the prosecution's case which entitled him to an acquittal.

[21] We were entirely with the learned trial judge and that the appellant was properly called to enter his defence.

THE APPELLANT'S DEFENCE

[22] The appellant gave evidence on oath. On the fateful night, he and Hakim was on their way back to their quarters at Tamar Estate after attending a farewell party of a fellow countryman. The party ended at about 10.30pm but he could not ascertain the time they reached the estate's gate. The gate was locked so he walked to the security post and knocked on the post's door, using a sheathed knife. He carried the knife as he was afraid of dogs. A security guard opened a window and gave him a key. The security guard followed him to the gate.

[23] As the appellant was unlocking the gate, the deceased appeared in front of the post's door and insulted him, using the words 'Cibai anjing, lanso (lancau), setan'. He apologised to the deceased. He also gave the deceased food that he brought from the party. The deceased took the food. Regardless, the deceased was still angry and again insulted him using the same words. Hakim reacted by saying 'Sudah bagi makan, mahu marah lagi'. The deceased then attacked the appellant with a 'parang'. The appellant did not see the attack coming and initially mistook the 'parang' as a piece of wood.

[24] He was injured on the right eyebrow by the deceased's first strike. He shouted Hakim's name for help. He then got hold of the deceased's hand but suffered further strike by the 'parang', causing injuries on his left forehead and on top of his head. Using his right hand, the accused took out a knife ('badek') tucked on his left side of his waist and stabbed the deceased at the stomach. When he and Hakim left the scene, the deceased was still alive, sitting and still holding the 'parang'. They went back to their quarters at Ladang Tamar.

[25] He was working the next morning. At about 10am, he went back to his quarters and was told that the police were looking for him. He fled into the woods. On 23 October 2012, out of hunger, he went to look for food where he was consequently caught.

[26] The appellant testified that he was sent to a clinic after his arrest where his wounds were stitched. PW10, after being re-called during the defence case, confirmed that the appellant was taken to Klinik Kesihatan Tatau after his arrest on 23 October 2012. Learned counsel failed to obtain the appellant's medical report despite applications being made to Tatau and Bintulu Hospitals. PW10 testified that he had made two applications to Klinik Kesihatan Tatau for a medical report to no avail.

[27] The police investigation had not recovered the 'parang' purportedly used by the deceased.

FINDINGS OF THE LEARNED TRIAL JUDGE AT THE END OF THE DEFENCE CASE

[28] The learned trial judge disbelieved the appellant's version of event and dismissed the appellant's claim to right of private defence as an afterthought. His Lordship accordingly found that the appellant had failed to raise a reasonable doubt against the prosecution's case, and that the charge of murder against the appellant had been proven beyond reasonable doubt. The appellant was found guilty, convicted of the offence proferred against him and was sentenced to suffer the death penalty.

THE APPEAL BEFORE US

[29] Learned counsel submitted three grounds of appeal, namely:

(a) right of private defence under s 96 of the Penal Code;

(b) grave and sudden provocation under Exception 1 to s 300 of the Penal Code; and

(c) sudden fight under Exception 4 to s 300 of the Penal Code.

OUR DECISION

[30] The learned trial judge, having addressed the issues of private defence and grave and sudden provocation at the end of the prosecution case, again dealt with the issues at the end of the defence case and proceeded to dismiss the same.

A RIGHT OF PRIVATE DEFENCE

[31] The learned trial judge had given a lengthy reasoning on why he disbelieved the appellant's version of event that the deceased had attacked him first using a 'parang' and he stabbed the deceased in self-defence. Those reasoning can be found at paras 50–60 of His Lordship's judgment. The reasons were mainly as follows:

(a) the appellant's failure to state in his cautioned statement ('exh D1') the facts that the deceased had inflicted three injuries on him before he stabbed the deceased. The appellant also had failed to mention what were the injuries suffered;

(b) there was no evidence to support the appellant's testimony that he had suffered those injuries due to the attack by the deceased;

(c) there was no evidence that those injuries were serious and life-threatening as the appellant was able to go to work the next day and had been able to hide himself in the woods for three days before being caught;

(d) there was the evidence of PW8 that the appellant had suffered minor injuries on his head and body due to a scuffle that happened when he was being apprehended by PW8 on 23 October 2013; and

(e) there was neither any evidence of a 'parang' being used nor any evidence of the 'parang' being concealed or disposed off by anybody. The police investigation had failed to recover the said 'parang'.

[32] On the facts and evidence, we were entirely with the learned trial judge's findings that the appellant's testimony was not credible nor plausible.

[33] In assessing the finding of the learned trial judge, we are mindful of what has been held by the late Eusoffe Abdoolcader FCJ in delivering the decision of the Federal Court in *Dato Mokhtar bin Hashim & Anor v Public Prosecutor* [1983] 2 MLJ 232; [1983] 2 CLJ 10 (FC):

> The credibility of a witness is primarily a matter for the trial judge. There is a homogeneous concatenation of authority on this principle and we refer to the locus classicus on this aspect in a passage in the judgment of Lord Thankerton in *Watt or Thomas v Thomas* [1947] AC 484 (at p 487). The Privy Council said in *Caldeira v Gray* [1934] 1 LNS 5 that the functions of an appellate court, when dealing with a question of fact, and a question of fact in which questions of credibility are involved, are limited in their character and scope, and that in an appeal from a decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, an appellate court must in order to reverse, not merely entertain doubts whether the decision below is right but be convinced that it is wrong. We feel that the following passage (at p 138) from the judgment of that Board in that case delivered by Lord Alness bears citation in extenso:
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> > The appellant is exercising a right of appeal which is his by right, and their Lordships recognise that they cannot merely because the question is one of fact, and because it has been decided in one way by the learned trial judge abdicate their duty to review his decision, and to reverse it, if they deem it to be wrong. Nonetheless, the functions of a Court of Appeal, when dealing with a question of fact, and a question of fact, moreover, in which, as here, questions of credibility are involved, are limited in their character and scope.
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> This is familiar law. It has received many illustrations — and, in particular in the House of Lords, the most recent of these being the case of *Powell & Wife v Streatham Manor Nursing Home,* [1935] AC 243; 104 LJ KB 304; 152 LT 563; 79 SJ 179; 51 TLR 289. In that case it was held that:
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> > Where the judge at the trial has come to a conclusion upon the question which of the witnesses, whom he has seen and heard, are trustworthy and which are not, he is normally in a better position to judge of this matter than the appellate

A tribunal can be: and the appellate tribunal will generally defer to the conclusion which the trial judge has formed.

Lord Wright, in the course of his speech, said:

B Two principles are beyond controversy. First it is clear, that, in an appeal of this character, that is from the decision of a trial judge based on his opinion of the trustworthiness of witnesses whom he has seen, the Court of Appeal must, in order to reverse, not merely entertain doubts whether the decision below is right, but be convinced that it is wrong.

C **[34]** We have examined the facts and the evidence of this case and decided that we were convinced that the learned trial judge was right in his finding. We have no business to interfere thereto.

D **[35]** On the same ground, we also found no basis to support the appellant's claim to a defence of sudden fight.

GRAVE AND SUDDEN PROVOCATION

E **[36]** It is incumbent upon the appellant to show that the provocation was sudden and grave, and it was the deceased who gave the provocation. The standard of proof that is required is upon a balance of probabilities: *Public Prosecutor v Yuvaraj* [1969] 2 MLJ 89; *Ng Eng Kooi & Anor v Public Prosecutor* [1970] 1 MLJ 267; *Bala Anak Matik v Public Prosecutor* [2006] 3 MLJ 516; F [2006] 2 CLJ 229.

[37] The test of grave and sudden provocation had been stated in a Supreme Court case of *Lorensus Tukan v Public Prosecutor* [1988] 1 MLJ 251.

G **[38]** The learned trial judge's reasoning in rejecting the defence of a grave and sudden provocation can be found at para 61 of His Lordship's judgment. It was the failure of the appellant to prove the following:

(a) H whether the words used by the deceased to scold him were sufficient to deprive him of the power of self-control and he had lost control of himself;

(b) whether there was a cooling period;

(c) I whether the means used to retaliate were reasonable in view of the provocation made;

(d) whether there was any necessity to attack or inflict the injuries on the deceased; and

(e) whether the appellant had caused the death by mistake or accident.

[39] Based on the facts and evidence, we were in full agreement with the said findings of the learned judge and had no basis to find otherwise.

CONCLUSION

[40] For the reasons given, we find no real substance in this appeal to merit our intervention. The appeal against conviction is dismissed and the sentence handed down by the High Court is affirmed.

Appeal against conviction dismissed; sentence of High Court affirmed.

Reported by Fatin Mohd Ismail